



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,811	09/18/2003	Maurice Gerard Lynch	60286-USA	6615

7590 04/12/2005

Patent Administrator  
FMC Corporation  
1735 Market Street  
Philadelphia, PA 19103

EXAMINER
----------

VANIK, DAVID L

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/665,811

Applicant(s)

LYNCH, MAURICE GERARD

Examiner

David L. Vanik

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

Receipt is acknowledged of the applicant's Oath or Declaration filed on 2/17/2004.

#### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-3, 7-9, and 12-13, drawn to a composition, beads comprising flocculated microcrystalline cellulose, classified in class 424, subclass 439.
  - II. Claims 4-6 and 10-11, drawn to a process of preparing beads or particles, classified in class 424, subclass 489.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the beads of Invention I can be prepared by a materially different process. For example, the beads can be prepared by (1) dispersing microcrystalline cellulose in water, (2) adding potassium chloride and carrageenan to the dispersion, (3) pasteurizing the dispersion at 79.4° for three seconds, (4) homogenizing the solution in two stages, and (5) cooling the solution.

4. Searching the inventions of Groups I – II together would impose a search burden on the examiner. In the instant case, the search of a composition and a process of making said composition would impose a search burden.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and the search required for each subset of Groups I – II are not required for one another, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Art Unit: 1615

9. During a telephone conversation with Paul Fair on 3/28/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-3, 7-9, and 12-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-6 and 10-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-9, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,037,380 ('380).

'380 disclose micro-particles comprising microcrystalline cellulose and a carrier liquid, water (abstract and column 2, lines 60-65). It is the position of the examiner that the term "particle" reads on the term "bead." The microcrystalline cellulose-based particles further comprise a texture modifier, carrageenan, and an oil, corn oil (Example 14; column 13, lines 1-25). Since the composition contains flocculating agents, such as potassium chloride and sodium chloride, it is the examiner's position that the composition disclosed by '380 is flocculated (Example 14; column 12, line 35 – column 13, line 25).

It is the examiner's position that, inherently, the composition advanced by '380 would disintegrate upon rubbing on the skin. Since the essential elements of the '380 composition are identical to the instant compositions (that is, a particle or bead comprising microcrystalline cellulose, a carrier liquid, oil, and a texture modifier), the composition is expected to have the same physiochemical properties as the compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '380 anticipates the compositions enumerated in the instant claims 1-3, 7-9, and 12-13.

Claims 1-3, 7-9, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,025,007 ('007).

'007 disclose finely divided cellulose compositions useful for food systems (abstract). The particulate compositions comprise a cellulose component, microcrystalline cellulose, and one or more surfactants (column 3, lines 30-65). It is the position of the examiner that the term "particle" reads on the term "bead." The colloidal microcrystalline cellulose-based particles further comprise a texture modifier, carrageenan, and can also comprise oil (column 6, line 2 and column 21, lines 63-67). Since the composition contains flocculating agents, such as lactic acid, it is the examiner's position that the composition disclosed by '007 is flocculated (column 5, lines 60-67).

It is the examiner's position that, inherently, the composition advanced by '007 would disintegrate upon rubbing on the skin. Since the essential elements of the '007 composition are identical to the instant compositions (that is, a particle or bead comprising microcrystalline cellulose, a carrier liquid, oil, and a texture modifier), the composition is expected to have the same physiochemical properties as the compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '007 anticipates the compositions enumerated in the instant claims 1-3, 7-9, and 12-13.

Claims 1-2, 7-8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,209,669 A ('669).

'669 disclose a pharmaceutical composition in the form of beads (abstract). The beads comprise Avicel, a microcrystalline cellulose-based compound, and a texture modifier, gelatin (page 2, lines 2-5 and page 3, lines 9-23). Since the composition contains flocculating agents, such as ethanol, it is the examiner's position that the composition disclosed by '669 is flocculated (page 3, lines 23-26 and abstract).

It is the examiner's position that, inherently, the composition advanced by '669 would disintegrate upon rubbing on the skin. Since the essential elements of the '669 composition are identical to the instant compositions (that is, a particle or bead comprising microcrystalline cellulose, a carrier liquid, and a texture modifier), the composition is expected to have the same physiochemical properties as the

Art Unit: 1615

compositions set forth in the instant application. As such, it is the examiner's position that the composition advanced by '669 anticipates the compositions enumerated in the instant claims 1-2, 7-8, and 12.

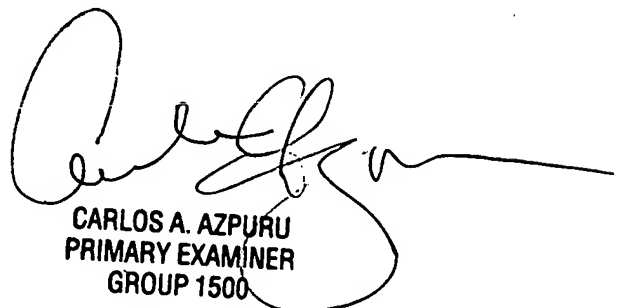
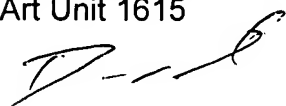
### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.  
Art Unit 1615



CARLOS A. AZPURU  
PRIMARY EXAMINER  
GROUP 1500